CHADBOURNE & PARKE LLP
Attorneys for the Petitioner
30 Rockefeller Plaza
New York, New York 10112
(212) 408-5100
Howard Seife, Esq.
Francisco Vazquez, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
GLOBAL GENERAL AND REINSURANCE COMPANY LIMITED	:	In a Case Under Chapter 15 of the Bankruptcy Code
	:	
Debtor in a Foreign Proceeding.	:	Case No. 11-

MEMORANDUM OF LAW IN SUPPORT OF PETITION UNDER CHAPTER 15 OF THE BANKRUPTCY CODE FOR RECOGNITION OF A FOREIGN MAIN PROCEEDING, FOR A PERMANENT INJUNCTION AND RELATED RELIEF

Simon Brincklow (the "Petitioner"), the duly authorized foreign representative, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of GLOBAL General and Reinsurance Company Limited (the "Company"),[1] by his United States counsel, Chadbourne & Parke LLP, respectfully submits this Memorandum of Law in support of his petition (the "Petition") filed under Chapter 15 of the Bankruptcy Code and the accompanying Verified Petition pursuant to Chapter 15 of the Bankruptcy Code, Rule 7065 of the Federal Rules of

[1] All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Verified Petition under Chapter 15 of the Bankruptcy Code for Recognition of a Foreign Main Proceeding, for a Permanent Injunction, and Related Relief filed in the above-captioned case (the "Verified Petition").

Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 65 of the Federal Rules of Civil Procedure. The Petitioner seeks recognition of a foreign main proceeding.[2]

PRELIMINARY STATEMENT

The Company is an English insurance and reinsurance company authorized by the United Kingdom Financial Services Authority to carry out contracts of insurance. The Company ceased underwriting and went into run-off on October 28, 2002.

When insurance or reinsurance companies enter into run-off, they cease writing new business and seek to determine, settle and pay all liquidated claims of their insureds either as they arise, or, if possible, before they arise. Typically, a run-off of an insurance or reinsurance company will take 20 or more years to complete. To shorten the time period for the run-off of the Company, and, in particular the Scheme Business, and to reduce administrative costs, the Company proposed a "cut off" scheme of arrangement under English law (the "Scheme").

By order dated October 21, 2010 (the "Convening Order"), a copy of which is annexed to the Verified Petition as Exhibit "B," the High Court (i) granted leave to the Company to convene meetings of Scheme Creditors for the purpose of considering and, if thought fit, approving the Scheme (the "Meetings") and (ii) confirmed that the Petitioner is the foreign representative for the purpose of filing a petition for recognition of the Scheme, and for additional relief under Chapter 15 of the Bankruptcy Code. During the Meetings, the requisite majorities of each class of Scheme Creditors of the Company voted in favor of the Scheme.

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[2] The Petitioner seeks recognition and relief respecting a foreign main proceeding, as defined in section 1502(4) of the Bankruptcy Code, with respect to the proceeding before the High Court of Justice of England and Wales (the "High Court") in England in connection with the scheme of arrangement proposed by the Company given that the Company's center of main interest is in England. Nevertheless, should this Court determine that the proceeding is not a foreign main proceeding, the Petitioner respectfully requests that the Court entertain the Petition of the Company as one for recognition of, and relief respecting, a foreign nonmain proceeding, as defined in section 1502(5) of the Bankruptcy Code. The Company has a place of operations in England where it carries out nontransitory economic activity and, therefore, the Company has an establishment, as defined in section 1502(2) of the Bankruptcy Code, in England.

By order dated January 28, 2011 (the "Sanction Order"), the High Court sanctioned the Scheme.[3] A Copy of the Sanction Order is annexed to the Verified Petition as Exhibit "C." The Scheme will become effective, and thereby binding on all Scheme Creditors of the Company wherever located upon delivery of the Sanction Order to the Registrar of Companies in England and Wales (the "Registrar").

Pursuant to the Scheme, the value of a Scheme Creditor's claims arising under Scheme Business will be determined by agreement or pursuant to a claims valuation process. The value of such claims will be adjusted by (i) deducting the amount of any Reinstatement Premium, (ii) applying any applicable set-off, (iii) adding the 4% uplift provided for as part of the Risk Transfer Premium (where applicable), (iv) deducting any applicable costs and (v) deducting the amount of any applicable Security.[4] The Company anticipates that all such claims valued in accordance with the Scheme will be paid in full.

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[3] As discussed in greater detail in the Verified Petition, the Company wrote a wide array of insurance and reinsurance business in England, including property, marine, general liability, worker's compensation and motor. During the course of its run-off, the Company implemented three different schemes of arrangement to address the liabilities arising under the different lines of insurance business. Two of those schemes of arrangement were previously recognized by this Court under Chapter 15 of the Bankruptcy Code.

[4] Where no risk or only limited risk is being passed back to the Scheme Creditor, the Scheme Creditor will not receive a Risk Transfer Premium and its Claims will be discounted to account for the time value of money.

By the Petition, the Petitioner, as the foreign representative of the Company, seeks entry of an order of this Court recognizing the Scheme, along with a permanent injunction and other relief, pursuant to Chapter 15 of the Bankruptcy Code. The order, substantially in the form of the proposed Order Granting Recognition of Foreign Proceeding, a Permanent Injunction and Related Relief (the "Proposed Order"), a copy of which is annexed to the Verified Petition as Exhibit "D," is necessary to ensure the effective implementation of the Scheme in the United States.

Chapter 15 of the Bankruptcy Code, among other things, authorizes this Court to: (i) recognize a foreign proceeding after the proper commencement of a case under Chapter 15 by a foreign representative, as defined in section 101(24) of the Bankruptcy Code; and (ii) grant assistance in the United States[5] to such foreign representative in connection with the foreign proceeding, including by granting appropriate relief pursuant to section 1521 of the Bankruptcy Code.

The Petition satisfies all of the requirements set forth in section 1515 of the Bankruptcy Code. Moreover, given that the relief requested herein is necessary to give effect to the Scheme in the United States, the relief requested is appropriate under Chapter 15 of the Bankruptcy Code. Granting recognition to the Scheme and the relief requested is consistent with the goals of international cooperation and providing assistance to foreign courts, embodied in Chapter 15 of the Bankruptcy Code. Further, the relief requested is consistent with the relief afforded by the Court in

[5] As used herein, "United States" is defined to include the fifty states, and all U.S. territories and possessions.

other ancillary proceedings involving foreign insurance companies, both under former section 304 and now under Chapter 15 of the Bankruptcy Code.[6]

FACTS

The Court is respectfully referred to the Verified Petition, which outline the relevant facts, all of which are incorporated herein by reference.

I

ARGUMENT

THIS CASE IS PROPER UNDER CHAPTER 15

Chapter 15 of the Bankruptcy Code applies where assistance is sought in the United States by a foreign representative in connection with a foreign proceeding. See 11 U.S.C. § 1501(b)(l). This Chapter 15 case has been commenced for the purpose of obtaining the assistance of this Court to ensure the effective and economical administration of the Scheme by, among other things, restricting the Scheme Creditors from taking certain actions in the United States that would undermine the unified, collective run-off process in England.

A. This Case Concerns a Foreign Proceeding

Section 101 (23) of the Bankruptcy Code defines a "foreign proceeding" as:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are

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[6] On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") was enacted. The Act contains a number of amendments to the Bankruptcy Code, including new Chapter 15. Chapter 15 replaces section 304 and applies to ancillary cases, such as this one, filed on or after October 17, 2005.

> subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101 (23). Much like the definition of foreign proceeding used under section 304, the definition of a foreign proceeding for purposes of Chapter 15 is very broad and is specifically not limited to proceedings under a bankruptcy or insolvency statute, but also includes "debt adjustment" proceedings. Id.; see H. REP. NO. 109-31, pt. 1 (2005) (noting addition of "or debt adjustment" to definition "emphasizes that the scope of . . . chapter 15 is not limited to proceedings involving only debtors which are technically insolvent"); Howard Seife and Francisco Vazquez, U.S. Courts Should Continue to Grant Recognition to Schemes of Arrangement of Solvent Insurance Companies, 17 NORTON J. OF BANKR. L. & PRAC. 571, 573-75 (2008) (noting that the drafters of the Model Law and Chapter 15 intended definition of foreign proceeding to include solvent proceedings, such as solvent schemes).

The definition of a foreign proceeding is comprised of the following seven elements: "(a) a proceeding; (b) either judicial or administrative in character; (c) collective in nature; (d) in a foreign country; (e) authorized or conducted under a law related to insolvency or the adjustment of debts; (f) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and (g) which is for the purpose of reorganization or liquidation." In re ABC Learning Centres Ltd., Case No. 10-11711, 2010 WL 4735826, *5 (Bankr. D. Del. Nov. 16, 2010) (citing In re Betcorp Ltd., 400 B.R. 266, 277 (Bankr. D. Nev. 2009) (identifying the same seven elements); see also In re British Am. Ins. Co. Ltd., 425 B.R. 884, 901 (Bankr. S.D. Fla. 2010) (identifying six elements). Here, the Scheme and the proceedings respecting it under the Companies Act 2006 of Great Britain (the "Companies Act") before the High Court (the "English Proceedings") satisfy all seven requirements and therefore qualify as foreign proceedings.

First, the Scheme is a "proceeding." For the purpose of Chapter 15 recognition, "the hallmark of a 'proceeding' is a statutory framework that constrains a company's actions and that regulates the final distribution of a company's assets." In re Betcorp, Ltd., 400 B.R. at 278. Here, the Companies Act provides such a statutory framework. As described in the Declaration of Geraldine Emma Quirk, English legal counsel to the Company dated January 28, 2011 (the "Quirk Declaration"), the Companies Act governs the process for proposing, obtaining sanction of and implementing the Scheme, which sets forth the procedure for valuing Claims and making payments to Scheme Creditors.

Second, the Scheme and the English Proceedings are judicial in character. This Court has previously observed that "[t]here is significant judicial involvement in this scheme process." In re Board of Dirs. of Hopewell Int'l Ins. Ltd., 238 B.R. 25, 52 (Bankr. S.D.N.Y. 1999). As described in the Quirk Declaration, the High Court is instrumental to the implementation of a scheme of arrangement. Here, the High Court sanctioned the Scheme after conducting two hearings at which creditors had an opportunity to raise objections. First, on October 17, 2010, the High Court issued the Convening Order, pursuant to which it granted leave to the Company to convene the Meetings. See Quirk Declaration at ¶ 36. Second, on January 28, 2011, the High Court issued the Sanction Order. Absent the High Court's sanction, the Company could not implement the Scheme. See Quirk Declaration at ¶ 16.

Third, the Scheme and the English Proceedings are collective in nature. A proceeding is "collective if it considers the rights and obligations of all creditors." In re ABC Learning Centres Ltd., 2010 WL 4735826 at *6 (citing In re Betcorp, Ltd., 400 B.R. at 281). "The 'collective proceeding' requirement is intended to limit access to Chapter 15 to proceedings which benefit creditors generally and to exclude proceedings which are for the benefit of a single creditor." 8

COLLIER ON BANKRUPTCY ¶ 1501.03[1], 1501-7 (16th ed. Rev. 2009). As described in the Quirk Declaration, after becoming effective, the Scheme is binding on all Scheme Creditors. See Quirk Declaration at ¶ 44. The Scheme is therefore collective in nature.

Fourth, the Scheme and English Proceedings are located in a foreign country. The Company is an English insurance and reinsurance company. The Scheme was approved by the High Court in England. The Meetings were held in England and the Sanction Order was delivered to the Registrar of Companies in England. The Company will implement the Scheme and address the claims of Scheme Creditors in England. Therefore, there should be no dispute that the Scheme is located in England, a foreign country.

Fifth, the Scheme and English Proceedings are under a law relating to insolvency or adjustment of debt. As described in the Quirk Declaration, a scheme of arrangement under the Companies Act may be used to permit an orderly closure of all, or a part of, a Company's business. See Quirk Declaration at ¶ 5. A scheme would typically provide for the estimation, valuation and payment of debt. See Quirk Declaration at ¶ 8. As such, the Companies Act is a law related to the adjustment of debt.

Sixth, the Scheme and the English Proceedings subject the Company's assets and affairs to a foreign court's control or supervision. Under the Companies Act, the High Court possessed the authority to sanction the Scheme, and thereby determine the disposition of the Company's assets. Moreover, the High Court has exclusive jurisdiction to hear and determine any suit, action, claim, or proceeding and to settle any dispute which may arise out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme. See Quirk Declaration at ¶ 7.

Seventh, the Scheme and the English Proceedings are for the purpose of reorganization or liquidation. The Scheme, like a plan under Chapter 11, provides for the expeditious, economical and equitable determination, adjustment, liquidation and satisfaction of Claims against the Company. Thus, the Scheme and the English Proceedings satisfy all seven elements of section 101(23).

This Court has on many occasions recognized solvent schemes of arrangement that have been sanctioned in England as "foreign proceedings" under the Bankruptcy Code. See, e.g., In re Baloise Ins. Co. Ltd., Case No. 10-15358 (JMP) (Bankr. S.D.N.Y. Dec. 9, 2010) (granting recognition under Chapter 15 to solvent schemes of arrangement); In re Allianz Global Corporate & Specialty (France), Case No. 10-14990 (SMB) (Bankr. S.D.N.Y. Nov. 10, 2010) (same); In re Sphere Drake Insurance Limited, Case No. 08-12832 (Bankr. S.D.N.Y. Sept. 11, 2008) (granting Chapter 15 relief to solvent scheme of arrangement brought by a member of a reinsurance pool); In re Greyfriars Insurance Company Limited, et al., Case Nos. 07-12934 to 07-12944 (Bankr. S.D.N.Y. Oct. 23, 2008) (granting Chapter 15 relief to solvent schemes of arrangement by members of a reinsurance pool for common pool business); In re Compagnie Européenne d'Assurances Industrielles S.A., Case No. 07-12009 (Bankr. S.D.N.Y. Sept. 26, 2007) (granting Chapter 15 relief to solvent scheme of arrangement); In re AXA Ins. UK PLC, et al., Case Nos. 07-12110 to 07-12113 (Bankr. S.D.N.Y. Aug. 15, 2007) (granting Chapter 15 relief to solvent schemes of arrangement by members of a reinsurance pool for common pool business); In re Arion Ins. Co. Ltd., Case No. 07-12108 (Bankr. S.D.N.Y. Aug. 9, 2007) (granting Chapter 15 relief to a solvent scheme of arrangement); In re Europäische Rückversicherungs-Gesellschaft in Zürich, Case No. 06-13061 (Bankr. S.D.N.Y. Jan. 22, 2007) (same); In re Gordian Runoff (UK) Ltd., Case No. 06-11563 (Bankr. S.D.N.Y. Aug. 29, 2006) (same); In re Lion City Run-off Private Ltd., Case No. 06-10461 (Bankr. S.D.N.Y. April 13, 2006) (same); In re La Mutuelle du Mans Assurance IARD, Case No.

05-60100 (Bankr. S.D.N.Y. Dec. 7, 2005) (same); see also Hopewell, 238 B.R. 25 (granting section 304 relief to a Bermuda solvent scheme of arrangement), aff'd, 275 B.R. 699 (S.D.N.Y. 2002). Accordingly, the English Proceedings are precisely the sort of proceeding that Chapter 15 was meant to assist. See Seife, supra page 6, at 575-578 (discussing the elements of a foreign proceeding).

B. The Case Was Commenced by a Foreign Representative

This Chapter 15 case was commenced by a duly appointed and authorized "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code. That section provides as follows:

> The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). In this instance, the Petitioner is an individual appointed by the Company to act as the foreign representative. In the English Proceedings, the High Court issued the Sanction Order, which provides, in pertinent part, that the Petitioner "has duly been appointed as and is the foreign representative of the pending proceedings concerning the Scheme for the purpose of filing a petition for the recognition of the Scheme and seeking additional relief with the United States Bankruptcy Court under Chapter 15 of the United States Bankruptcy Code." From the face of the evidence submitted on behalf of the Petitioner, namely the Convening Order, the Petitioner is duly authorized to act as the foreign representative, as defined under section 101(24) in this Chapter 15 case. The Petitioner, as the foreign representative of the Company, is therefore entitled to commence this ancillary case under Chapter 15 of the Bankruptcy Code.

II

THIS CHAPTER 15 CASE WAS PROPERLY COMMENCED

This Chapter 15 case was duly and properly commenced as required by sections 1504 and 1509 of the Bankruptcy Code by the filing of a petition for recognition of a foreign proceeding under section 1515(a) of the Bankruptcy Code, accompanied by all documents and information required by section 1515(b) and (c). See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007) ("A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code."), aff'd, 389 B.R. 325 (S.D.N.Y. 2008). Because the Petition satisfies the requirements set forth in section 1515 of the Bankruptcy Code, this Chapter 15 case has been properly commenced by the Petitioner.

III

THE ENGLISH PROCEEDINGS AND THE SCHEME SHOULD BE RECOGNIZED AS A FOREIGN MAIN PROCEEDING

This Court should recognize the English Proceedings and the related Scheme as a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code. The Bankruptcy Code provides that a foreign proceeding for which recognition is sought must be recognized as a "foreign main proceeding" if it is pending in the country where the debtor has the center of its main interests. See 11 U.S.C. § 1517(b)(l). While the Bankruptcy Code does not define "center of main interests," it does provide that absent evidence to the contrary, the debtor's registered office is presumed to be the center of the debtor's main interests. 11 U.S.C. § 1516(c); In re ABC Learning Centres Ltd., 2010 WL 4735826 at *11 (citing In re Tri-Continental Exchange Ltd., 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006)). See also In re Bear Stearns, 374 B.R. 122, 130 (Bankr. S.D.N.Y.

2007), aff'd, 389 B.R. 325 (S.D.N.Y. 2008) (noting that presumption that debtor's center of main interests is the place of its registered office may be "rebutted by evidence to the contrary").

The Company's registered office is located in England. In accordance with section 1517(b), England should be found to be the center of the Company's main interests in the absence of evidence to the contrary. See In re SPhinX, Ltd., 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) (noting that the debtors' center of main interests are presumed to be the Cayman Islands, where the debtors are registered), aff'd, 371 B.R. 10 (S.D.N.Y. 2007). In this instance, the facts presented by the Petitioner do not rebut the presumption, but rather support a finding that the Company's center of main interests is in England. See In re Basis Yield Alpha Fund (Master), 381 B.R. 37, 54 (Bankr. S.D.N.Y. 2008) (noting that allegations regarding an insurance company's connections to England justified reliance on the presumption).

As set forth in the Quirk Declaration, the Company has a principal place of business in England. At least one court has equated a company's principal place of business to its center of main interests. See In re Tri-Continental Exch. Ltd., 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006). The business that is subject to the Scheme was underwritten in England. Furthermore, the Company on a regular basis conducted the administration of its interests and, in particular, its Scheme Business, in England. As such, England is "ascertainable by third parties" as the Company's center of main interests. See In re Bear Stearns, 374 B.R. at 130 (noting that debtors' center of main interests is the United States where the debtors "conduct the administration of their interests on a regular basis and is therefore ascertainable by third parties"). Accordingly, given that the Scheme was approved in the English Proceedings before the High Court and is to be implemented in England, and because England is the center of the Company's main interests, the English Proceedings should be recognized as a foreign main proceeding.

IV

THE RELIEF REQUESTED SHOULD BE GRANTED

An order recognizing a foreign proceeding shall be entered if all of the requirements for recognition have been met. 11 U.S.C. § 1517. As set forth above, the English Proceedings and the Scheme constitute foreign proceedings within the meaning of section 1502 of the Bankruptcy Code. The Petitioner qualifies as a foreign representative. Furthermore, the Petition satisfies the requirements of section 1515 of the Bankruptcy Code. Therefore, pursuant to section 1517(a) and 1517(b) of the Bankruptcy Code, the Court should enter an order recognizing the Scheme. The legislative history to Chapter 15 provides that:

> The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of [section 1517], which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition.

H.R. REP. 109-31, pt. 1 (2005). Thus, recognition under sections 1517(a) and (b) of the Bankruptcy Code is mandatory where, as here, a Chapter 15 petition meets the statutory requirements.

Moreover, the recognition of the Scheme as a foreign proceeding would not be inconsistent with section 1506 of the Bankruptcy Code. That section provides that nothing in Chapter 15 shall prevent the Court from refusing to take an action otherwise required by Chapter 15 if such action would be manifestly contrary to the public policy of the United States.[7] 11 U.S.C. §

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[7] As the legislative history explains, "[section 1506] follows the Model Law article 5 exactly, [which] is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States." H.R. REP. 109-31 pt. 1 (2005).

1506. The relief requested by the Petitioner is not manifestly contrary to, but rather consistent with, United States public policy.

It is well established that one of the fundamental goals of the Bankruptcy Code is the centralization of disputes involving the debtor. See, e.g., In re Ionosphere Clubs, Inc., 922 F.2d 984, 989 (2d Cir. 1990) ("The Bankruptcy Code 'provides for centralized jurisdiction and administration of the debtor, its estate and its reorganization in the Bankruptcy Court . . .'"). Indeed, as one court has noted, "the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction." Cornfeld v. Investors Overseas Servs., Ltd., 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (recognizing that Canadian liquidation proceeding would not violate laws or public policy of New York or the United States). The Scheme is similar to bankruptcy or liquidation proceedings in that it provides for a centralized process to (i) assert and resolve claims against an estate and (ii) make distributions to creditors. Recognizing the Scheme, enjoining certain actions against the Company and granting the relief requested would assist the implementation and further administration of the Scheme. These consequences are demonstrably consistent with the public policy of the United States.

Indeed, the relief requested is similar if not virtually identical to the relief granted in other ancillary cases under former section 304 and under Chapter 15 of the Bankruptcy Code. Under former section 304, courts in this District granted recognition to other solvent schemes of arrangement of insurance companies and thereby made them binding on and enforceable against creditors in the United States.[8] Under Chapter 15 of the Bankruptcy Code, courts in this District have continued to grant recognition to solvent schemes of arrangement of insurance companies.[9]

Further, recognition of the Scheme would be consistent with the purpose of Chapter 15 and its predicate, the UNCITRAL Model Law on Cross-Border Insolvency. Section 1501 of the Bankruptcy Code provides, in pertinent part that:

> The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of -
>
> (1) cooperation between -
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> * * *
>
> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
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> * * *
>
> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

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8 See, e.g., Hopewell, 238 B.R. 25, aff'd, 275 B.R. 699 (S.D.N.Y. 2002); In re Unione Italiana (UK) Reinsurance Co. Ltd., Case No. 04-17989 (Bankr. S.D.N.Y. June 8, 2005); Aviation & General Ins. Co. Ltd., Case No. 04-13499 (Bankr. S.D.N.Y. Aug. 5, 2004); In re Ludgate Ins. Co. Ltd., Case No. 04-10590 (Bankr. S.D.N.Y. Apr. 8, 2004); In re The Nichido Fire & Marine Ins. Co. Ltd., Case No. 01-15987 (Bankr. S.D.N.Y. Feb. 13, 2002).

9 See, e.g., In re Baloise Ins. Co. Ltd., Case No. 10-15358 (JMP) (Bankr. S.D.N.Y. Dec. 9, 2010); In re Allianz Global Corporate & Specialty (France), Case No. 10-14990 (SMB) (Bankr. S.D.N.Y. Nov. 10, 2010); In re Sphere Drake Insurance Limited, Case No. 08-12832 (Bankr. S.D.N.Y. Sept. 11, 2008); In re Greyfriars Insurance Company Limited, et al., Case Nos. 07-12934 to 07-12944 (Bankr. S.D.N.Y. Oct. 23, 2007); In re Compagnie Europèene d'Assurances Industrielles S.A., Case No. 07-12009 (Bankr. S.D.N.Y. Sept. 26, 2007); In re Oslo Reinsurance Company (UK) Limited, et al., Case No. 07-12211 (Bankr. S.D.N.Y. Aug. 29, 2007); In re Axa Ins. UK PLC, et al., Case Nos. 07-12110 to 07-12113 (Bankr. S.D.N.Y. Aug. 15, 2007; In re Axion Ins. Co. Ltd.., Case No. 07-12108 (Bankr. S.D.N.Y. Aug. 9, 2007); In re Europäische Rückversicherungs-Gesellschaft in Zürich, Case No. 06-13061 (Bankr. S.D.N.Y. Jan. 22, 2007); In re Gordion Runoff (UK) Ltd., Case No. 06-11563 (Bankr. S.D.N.Y. Aug. 29, 2006);In re Lion City Run-off Private Ltd., Case No. 06-10461 (Bankr. S.D.N.Y. Apr. 13, 2006); In re La Mutuelle du Mans, Assurance IARD, Case. No. 05-60100 (Bankr. S.D.N.Y. Dec. 7, 2005).

(4) protection and maximization of the value of the debtor's assets.

11 U.S.C. § 1501.

The relief requested by the Petitioner is consistent with, and critical to effectuate, the objectives of Chapter 15 for several reasons. First, recognition of the Scheme would foster cooperation between the High Court and United States courts. By granting recognition of the Scheme and granting injunctive relief, this Court would in effect be cooperating with the High Court in the implementation of the Scheme and the Sanction Order. Scheme Creditors would generally be enjoined by this Court from commencing or continuing actions against the Company, thereby promoting the enforcement of the Scheme sanctioned by the High Court.

Second, recognition of the Scheme would promote the fair and efficient administration of a cross-border debt-adjustment procedure that protects the interests of all creditors and interested entities. By recognizing the Scheme, the process of resolving Claims would be centralized in England. Scheme Creditors would be required to assert their Claims in accordance with the terms of the Scheme and any disputes would be subject to the uniform jurisdiction of one tribunal, the High Court, as intended by the Scheme, in a manner that harmonizes the interests of the Scheme Creditors, including those in the United States. If the Scheme Creditors are not effectively stayed, the uniform and orderly determination and settlement of Claims may be jeopardized.

Finally, the relief requested would protect the Company's assets. Absent such relief, the Company's assets may be depleted and available resources may be expended unnecessarily to defend collection and other actions brought in the United States in contravention of the Scheme and the Sanction Order. Accordingly, the relief requested would further the objectives of Chapter 15 by assisting the implementation of the Scheme.

V

THE PETITIONER IS ENTITLED TO RELIEF UNDER SECTION 1520

Upon recognition of the Scheme as a foreign main proceeding, certain express relief is automatically granted as a matter of right. 11 U.S.C. § 1520. In particular, section 1520(a)(l) requires that the automatic stay provisions of section 362 of the Bankruptcy Code apply to protect the Company from any claim or act to take possession of its property.

The Petitioner is requesting the relief afforded under section 1520 only to the extent such relief is consistent with the terms of the Scheme, which bar any actions against the Company or its property to establish or enforce Claims against the Company. Accordingly, the Proposed Order provides that sections 361 and 362 of the Bankruptcy Code only apply "with respect to the Company and all of the property of the Company that is within the territorial jurisdiction of the United States in relation to Claims."

VI

THE RELIEF REQUESTED UNDER SECTION 1521 IS NECESSARY AND APPROPRIATE

In addition to the relief provided by section 1520 of the Bankruptcy Code, the Petitioner, as the foreign representative of the Company, requests relief under section 1521 of the Bankruptcy Code to assist in the effective implementation of the Scheme. Upon recognition of a foreign proceeding, at the request of the foreign representative, the Court may grant, with certain express exceptions, "any appropriate relief," including "any additional relief that may be available to a trustee" and injunctive relief provided that the Court determines that doing so is necessary to effectuate the purpose of Chapter 15 and to protect the assets of the debtor or the interests of the creditors. 11 U.S.C. § 1521(a). The Court may grant such relief only if the interests of creditors and other interested entities, including the debtor, are sufficiently protected. See 11 U.S.C. § 1522.

Without the relief requested, the Scheme cannot be administered in a unified, fair and efficient manner that would protect the interests of all of the Company's stakeholders, nor would the value of the Company's assets be maximized. In the absence of the relief requested, United States Scheme Creditors could obtain judgments without regard to the Scheme, leading to the unequal treatment of certain creditors. Such an outcome would be contrary to the Scheme as well as to the fundamental purpose of the Bankruptcy Code. See Cunard Steamship Co. Ltd. v. Salen Reefer Services A.B., 773 F.2d 452, 459 (2d Cir. 1985) (explaining that the "guiding premise of the Bankruptcy Code, like its predecessor, the Bankruptcy Act, is the equality of distribution of assets among creditors."). Moreover, such relief is necessary to effectuate the purpose of Chapter 15. Accordingly, section 1521 of the Bankruptcy Code expressly authorizes the Court to grant the requested relief.

VII

INJUNCTIVE RELIEF IS APPROPRIATE

In order to obtain injunctive relief under section 1521 of the Bankruptcy Code, a foreign representative must satisfy the traditional standard for an injunction. 11 U.S.C. § 1521(e). That standard requires that a court consider whether (i) the plaintiffs are successful on the merits of their claim, (ii) there is no available remedy at law, and (iii) the balance of equities favors granting such relief. See Travellers Int'l AG v. Trans World Airlines, Inc., 722 F. Supp. 1087, 1096 (S.D.N.Y. 1989), aff'd, 41 F.3d 1570 (2d Cir. 1994); New York State Nat'l Org. for Women v. Terry, 704 F. Supp. 1247, 1262 (S.D.N.Y.), aff'd as modified, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990).

A. The Petitioner Has Demonstrated the Likelihood of Success on the Merits

As described herein, the Petitioner has demonstrated the likelihood of its success as to the merits of the Petition. First, the Company is subject to foreign proceedings. Second, the Petitioner is the foreign representative of the Company and its foreign proceeding. Third, the requested relief will permit the orderly resolution of Claims in the proceeding brought under foreign law consistent with Chapter 15 of the Bankruptcy Code. Finally, the Petition satisfies all of the requirements set forth in section 1515 of the Bankruptcy Code.

B. No Available Remedy at Law

Irreparable harm is one basis for establishing the inadequacy of any legal remedy. Travellers, 722 F. Supp. at 1096. It has been consistently held that "the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury." In re Lines, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988). It has also been held that irreparable harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted. Victrix S.S. Co. S.A. v. Salem Dry Cargo A.B., 825 F.2d 709, 713-14 (2d Cir. 1987). Finally, irreparable harm has been found where allowing litigation to go forward would (i) threaten the assets of a foreign estate, (ii) subject a foreign representative to a default judgment, and (iii) divert funds needed for the purpose of maximizing value for the estate's creditors. In re Gercke, 122 B.R. 621, 626 (Bankr. D.C. 1991).

The risk of irreparable harm is present here. If Scheme Creditors in the United States are not enjoined, assets of the Company's estate may be prematurely pieced out and the orderly determination of Claims and the fair distribution of assets in the foreign proceeding will be severely disrupted. In this instance, injunctive relief is necessary "to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group." In re Banco Nacional de Obras y Servicios Publicos, S.N.C., 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988).

Absent the relief requested, including the permanent injunction, the Company may be forced to expend estate resources in defense of improper attachment and other similar actions by Scheme Creditors in contravention of the Scheme. Alternatively, the Company could forego their defenses altogether, resulting in default judgments and affording unfair advantage to some Scheme Creditors to the detriment of others. Thus, without the granting of the relief requested, the Company's estate and the Scheme Creditors will suffer irreparable harm.

On the other hand, granting the relief requested would ensure that the run-off of the Scheme Business is centralized in a single forum in furtherance of the interests of creditors. See Fidelity Mortg. Investors v. Camelia Builders, Inc., 550 F.2d 47, 55 (2d Cir. 1976), cert. denied, 429 U.S. 1093, and reh'g denied, 430 U.S. 976 (1977). "Indeed, the foreign court which presides over the original proceeding is in the best position to assess where and when claims should be liquidated so as to conserve estate resources and maximize the assets available for distribution." In re Bird, 222 B.R. 229, 233 (Bankr. S.D.N.Y. 1998) (citing Gercke, 122 B.R. 621); see also Armco Inc. v. North Atlantic Ins. Co. (In re Bird), 229 B.R. 90, 94 (Bankr. S.D.N.Y. 1999) (counterclaims asserted against debtor in adversary proceeding prohibited by preliminary injunction and should be determined in the foreign proceeding); In re Davis, 191 B.R. 577, 585 (Bankr. S.D.N.Y. 1996); In re Rubin, 160 B.R. 269, 279-80 (Bankr. S.D.N.Y. 1983). If the relief requested is granted, the run-off of the Scheme Business would be administered in a central forum in the interests of the Scheme Creditors and the Company.

C. The Balance Of Equities Tips Decidedly In Favor Of The Petitioner

In contrast to the hardships described above, issuing a permanent injunction which, among other things, grants recognition of the Scheme in the United States, will cause minimal hardship to United States Scheme Creditors. Indeed, all of the Company's Scheme Creditors will benefit from the Petitioner's efforts to preserve and maximize the value of the Company's estate and achieve the run-off of the Scheme Business and the global resolution of Claims. Without injunctive relief, there can be no equitable and orderly distribution of the Company's estate pursuant to a single, comprehensive plan. Thus, the balance of the equities tips decidedly in favor of the Petitioner.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant the relief requested.

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CHADBOURNE & PARKE LLP

By: */s/ Howard Seife*
Howard Seife
A Member of the Firm
Attorneys for the Petitioner
30 Rockefeller Plaza
New York, New York 10112
(212) 408-5119